

REMARKS

The claims are rejected under Section 112 and under Section 103. Applicants request reconsideration of the application in view of an oversight. Claims 11, 14, 16, 20-23 and 31-33 are pending, but all of these claims were incorrectly rejected under Section 103 using Rathjen (2004/0015383) which is not prior art. As further explained below, amendments presented herein fully address the rejections and objections under Section 112 and should be entered because they create no new issues and place the application in better condition for allowance, or alternatively, in better form for consideration upon appeal.

Withdrawal of Art Rejections

All of the prior art rejections rely upon the Rathjen reference in combination with at least one other reference. However, the effective prior art date of Rathjen is subsequent to the priority date of the present application. The Rathjen PCT application which had been relied upon for the rejection was not published in English and therefore the earliest date for purposes of establishing the disclosure of Rathjen as prior art is the U.S. filing date (June 13, 2003). This is after the priority date of the present application. Accordingly, the Examiner is requested to withdraw the rejections and allow all of the claims.

Applicants also urge that, even if the Rathjen reference were prior art, the combination of the Kuchlin publication in view of Rathjen would not render any of the claims obvious. This is because the Examiner, recognizing that Kuchlin does not disclose or suggest use of an XML parser relative to the claimed invention, has merely gone out and searched the prior art for a reference disclosing use of an XML parser and processor in order to reconstruct the invention in hindsight. The mere existence of such subject matter is not what renders the invention patentable. Rather, it is only the applicants who teach the combination and there is no suggestion in the prior art for creating this combination. Thus the rejections of claims 11, 14, 16, 20-22 and 31-33 should be allowed. Further, the rejection of claim 23 over Kuchlin in view of Rathjen and in further view of Modeste should also be withdrawn for similar reasons.

As stated in paragraph 16 at page 9 of the Final Office Action, the Examiner has provided a secondary reference (Rathjen) for the "newly added limitation of claim 11" as though it is permissible to simply word search the prior art to find the limitation and make a combination.

There is no motivation to make such a combination and any statement to the contrary would be contrived as part of a hindsight effort to reconstruct that which only the applicants teach.

For all of these reasons the art rejections must be withdrawn.

Withdrawal of Rejections Under Section 112


The rejection of claims 31-33 under Section 112 as well as the objection to the Specification under Section 112 are all based on applicants' recitation the "first transport layer" and the "second transport layer" but the above amendment now properly recites subject matter illustrated in Figure 5 and described at par [0027] of the published application. No new issues are raised and appropriate reference is made to one transport layer as well as first and second connections via the same one transport layer. For these reasons the rejection is now overcome.

Conclusion

For the foregoing reasons, it is respectfully submitted that the amendment should be entered and that the objections and rejections set forth in the outstanding Final Office Action are overcome or inapplicable to the present claims. Please grant any extensions of time required to enter this paper. The Commissioner is hereby authorized to charge any appropriate fees due in connection with this paper, including fees for additional claims and terminal disclaimer fee, or credit any overpayments to Deposit Account No. 19-2179.

Respectfully submitted,

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